

27188

STATE OF WISCONSIN VERNON COUNTY

CIRCUIT COURT BRANCH

STATE OF WISCONSIN,

PLAINTIFF

VS.

LEWIS E. BYRD,

DEFENDANT

PLEA HEARING

CASE NO: 16-CF-115

APRIL 5, 2017

COPY

BEFORE: HONORABLE MICHAEL ROSBOROUGH
CIRCUIT COURT JUDGE

APPEARANCES:

ATTORNEY TIMOTHY J. GASKELL
FOR THE PLAINTIFF, STATE OF WISCONSIN.

ATTORNEY JEFFREY MOCHALSKI
FOR THE DEFENDANT, LEWIS BYRD,
WHO APPEARED IN PERSON.

REPORTED BY:

CHRISTINE TOELLNER,
COURT REPORTER



1 THE COURT: All right. Count-1 of the
2 Information charges you with attempting to flee or elude
3 a traffic officer as a repeat offender. How do you
4 plead to that charge?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: You understand that the
7 maximum sentence for that would be a ten thousand fine?
8 Normally, for an I-felony it would be three years and
9 six months but because of the repeater allegation,
10 there's an additional potential for four years of prison
11 so you could go to prison for seven years and six months
12 on that charge. Do you understand that?

13 THE DEFENDANT: Yes, Sir.

14 THE COURT: And Count-2 is the charge of
15 attempting to flee or elude a traffic officer. In other
16 words, another charge like the charge in Count-1. The
17 penalties are identical to the charge in Count-1 except
18 I assume that the State would endeavor to prove that
19 another officer was involved or a different officer.

20 Right?

21 MR. GASKELL: Correct, Your Honor. At
22 one point Mr. Byrd actually slowed down and came to a
23 stop and then took off again.

1 THE COURT: All right.

2 Apparently what they would try to prove is not a
3 different officer but that there were two parts to this
4 fleeing. In other words, you fled for a while, you got
5 stopped, that's Count-1; and then you took off again,
6 that's Count-2. Do you understand that?

7 THE DEFENDANT: Yes, Sir.

8 THE COURT: And again, the penalty would
9 be as I indicated, up to seven years and six months, and
10 ten thousand dollars for that.

11 Then, in Count-3 you're charged with reckless
12 driving causing injury as a repeat offender. How do you
13 plead to that charge?

14 THE DEFENDANT: Guilty, Your Honor.

15 THE COURT: Okay. So your plea is guilty
16 to each charge?

17 THE DEFENDANT: Yes.

18 THE COURT: As to the reckless driving
19 causing injury as a repeat offender, you would be
20 looking at up to two years in prison. Do you understand
21 that?

22 THE DEFENDANT: Yes, Sir.

23 THE COURT: And a fine of up to two
24 thousand dollars. You understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: You read, signed, and
2 understand the Plea Questionnaire and Waiver of Rights
3 form that your lawyer has filed with the Court; is that
4 correct?

5 THE DEFENDANT: Yes, Sir.

6 THE COURT: And you are 39?

7 THE DEFENDANT: Yes, Sir.

8 THE COURT: You have a high school
9 diploma?

10 THE DEFENDANT: Yes, Sir.

11 THE COURT: You have any education beyond
12 high school?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: What's that?

15 THE DEFENDANT: I attended technical
16 college for motorcycle repair.

17 THE COURT: Did you get a certificate or
18 something?

19 THE DEFENDANT: Yes, Sir. I have a
20 diploma for that as well.

21 THE COURT: Are you currently receiving
22 treatment for a mental illness or an emotional disorder?

23 THE DEFENDANT: No, Sir.
24
25

1 THE COURT: Have you ever received
2 treatment or been told by a doctor that you should seek
3 treatment for those kinds of conditions?

4 THE DEFENDANT: No, Sir.

5 THE COURT: Have you used any alcohol,
6 medications, or illegal drugs in the last 24 hours?

7 THE DEFENDANT: No, Sir.

8 THE COURT: You understand you're giving
9 up your right to a trial by jury?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand you're
12 giving up your right to remain silent and your silence
13 could not be used against you at trial?

14 THE DEFENDANT: Yes, Sir.

15 THE COURT: You're giving up your right
16 to testify and present evidence at trial?

17 THE DEFENDANT: Yes, Sir.

18 THE COURT: You're giving up your right
19 to use subpoenas as the court order to require witnesses
20 to come to court and testify at trial?

21 THE DEFENDANT: Yes, Sir.

22 THE COURT: You're giving up your right
23 to a jury trial where all 12 jurors would have to agree
24 either all guilty or not guilty. Do you understand
25 that?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you both separately
3 consider each charge and that the verdict on one count
4 should not affect their verdict on any other?

5 THE DEFENDANT: Yes, Sir.

6 THE COURT: You're giving up your right
7 to confront in court people who would testify against
8 you and have your lawyer cross-examine, that is,
9 question them. Do you understand that?

10 THE DEFENDANT: Yes, Sir.

11 THE COURT: You're giving up your right
12 to make the State prove you guilty by evidence beyond a
13 reasonable doubt. Do you understand that?

14 THE DEFENDANT: Yes, Sir.

15 THE COURT: Do you understand that
16 requirement applies to each element of each offense?

17 THE DEFENDANT: Yes, Sir.

18 THE COURT: As to Count-1, they'd have to
19 prove that you were operating a motor vehicle on a
20 highway. Do you understand that?

21 THE DEFENDANT: Yes, Sir.

22 THE COURT: They'd have to prove that you
23 received a visual or audible signal from a marked police
24 vehicle. Do you understand they'd have to prove that?

25 THE DEFENDANT: Yes.

1 THE COURT: They'd have to prove that
2 after receiving that signal you did knowingly flee or
3 attempt to elude the officer. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And you did that in willful
6 disregard of the visual or audible signal. Do you
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And your actions knowingly
10 endangered the officer. Do you understand that? One or
11 more officers; do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: And we already talked about
14 how the State's theory of the case apparently is: That
15 there was one act of fleeing and then there was a second
16 act of fleeing shortly thereafter. Do you understand
17 that?

18 THE DEFENDANT: Yes, Sir.

19 THE COURT: All right. And then as to
20 the reckless driving, they'd have to prove that you did
21 operate your vehicle in a grossly negligent way on the
22 date in question. Do you understand that?

23 THE DEFENDANT: Yes, Sir.

24 THE COURT: And that you did cause bodily
25 harm to another person. Do you understand that?

1 THE DEFENDANT: Yes, Sir.

2 THE COURT: And that bodily harm means
3 deadly injury no matter how slight. Do you understand
4 that?

5 THE DEFENDANT: Yes, Sir.

6 THE COURT: And they'd have to prove that
7 the harm was the result of your operation of the vehicle
8 in a reckless manner. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Do you have any
11 question about any of the elements of the offense?

12 THE DEFENDANT: I'm sorry?

13 THE COURT: Are you pleading of your own
14 free will?

15 THE DEFENDANT: Yes, Sir.

16 THE COURT: Anyone threaten you in any
17 way?

18 THE DEFENDANT: No, Sir.

19 THE COURT: Anyone promise you anything
20 other than that we would order a presentence
21 investigation?

22 THE DEFENDANT: No, Sir.

23

24

25

1 THE COURT: And whatever amendment of the
2 charges that is reflected in this Amended Information,
3 that's the only consideration you're getting here;
4 right?

5 THE DEFENDANT: Yes.

6 THE COURT: You've had adequate time to
7 discuss this with your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: You're satisfied with his
10 representation of you?

11 THE DEFENDANT: Yes.

12 THE COURT: And, Counsel, you're
13 satisfied that your client's pleas are made knowingly,
14 intelligently, and voluntarily being fully aware of the
15 possible consequences?

16 MR. MOCHALSKI: I am.

17 THE COURT: Mr. Byrd, do you understand
18 that if you're not a citizen of the United States your
19 plea could result in deportation, the exclusion of
20 admission to this country or the denial of
21 naturalization under federal law?

22 THE DEFENDANT: Yes.

23 THE COURT: You understand that as a
24 convicted felon you may not vote in any election until
25 your civil rights are restored?

1 THE DEFENDANT: Yes, Sir.

2 THE COURT: And you are barred from ever
3 holding or possessing any firearms or ammunition. Do
4 you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You may also be barred from
7 possessing any body armor. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Very well.

10 Counsel, you are satisfied there's a factual basis
11 for your client's pleas?

12 MR. MOCHALSKI: I am based on Jacob's
13 Preliminary Hearing and the Complaint.

14 THE COURT: Mr. Byrd, you have been
15 present throughout the proceedings. You also read the
16 original complaint where the facts are set out; right?

17 THE DEFENDANT: Yes, Sir.

18 THE COURT: Are the facts accurately
19 recited in the Complaint and were they accurately
20 recited at any preliminary hearing?

21 THE DEFENDANT: I believe so. Yes, Your
22 Honor.

23

24

25

1 THE COURT: Okay. I'm satisfied then
2 that there's a factual basis for each of your pleas,
3 that your pleas were made knowingly, intelligently, and
4 voluntarily. I accept your pleas and find you guilty as
5 charged in Count-1 of attempting to flee or elude. One
6 other thing I should ask you. You're charged as a
7 repeater. Do you agree that based upon your prior
8 record you're properly charged as a repeat offender?

9 THE DEFENDANT: Yes, Sir.

10 THE COURT: All right. I find you guilty
11 as charged in Count-1 as a repeat offender and in
12 Count-2, and likewise in Count-3.

13 I'll order a presentence investigation. How about
14 May 22, at 2:30?

15 MR. MOCHALSKI: That's when the
16 investigation will be done?

17 THE COURT: That's sentencing.

18 MR. MOCHALSKI: Sentencing date? Yeah,
19 that'd be good.

20 THE COURT: May 22, at 2:30 for
21 sentencing. P.S.I. due by the 18th of May.

22 Bond is revoked. He's remanded to the custody of
23 the sheriff pending sentencing.

24 That's all. Thank you.
25